

March 6, 2009

TITLE 22. EMPLOYMENT DEVELOPMENT DEPARTMENT

Amendment of Title 22, California Code of Regulations, Sections 926-3, 926-4, and 926-5

TAXABLE VALUE OF MEALS AND LODGING

Notice of Proposed Rulemaking

The Employment Development Department (Department) proposes to amend California Code of Regulations (CCR), title 22, sections 926-3, 926-4, and 926-5, by increasing the taxable value of meals and lodging furnished to employees by employers for calendar year 2009. These increases are due to inflation.

The Department will adopt these amendments after considering all comments, objections, or recommendations regarding the proposed action.

Informative Digest/Policy Statement Overview:

CCR, title 22, sections 926-3, 926-4, and 926-5, provide the taxable value of meals and lodging furnished to employees by employers. In order to establish the equivalent amount of cash wages paid by employers who pay a portion of their employee's wages in the form of meals or lodging it is necessary to compute the reasonable cash value of such meals and lodging for unemployment insurance purposes. The Department makes this computation each calendar year to reflect the upward or downward trend in the cost of living during the previous calendar year. This yearly computation ensures an accurate and up-to-date calculation of the taxable values of meals and lodging for purposes of "wages" within the meaning of Unemployment Insurance Code (UIC) section 926.

According to the United States Department of Labor, Bureau of Labor Statistics [<http://data.bls.gov/cgi-bin/srgate>], the average retail food price index for fiscal year 2007-2008 was 215.6, up 512.5 percent from the average of 35.2 for the base year 1968-69. The average residential rent index for the fiscal year 2007-2008 was 275.5. This is 519.1 percent above the average residential rent index of 44.5 for the base year ended June 30, 1973. The Department uses 1968-1969 as the base year for food and 1972-1973 as the base year for rent because these are the years used by the Bureau of Labor Statistics.

These regulations are being amended to reflect, in substantially the same ratio, the increases in the retail food price index and residential rent index which occurred during the fiscal year ended June 30, 2008.

Notwithstanding sections 926-3(a)(2), 926-4(a)(2), and 926-5(a)(2)(A) of CCR, title 22, which state in part: "For the calendar year 2009 and thereafter, except as modified herein . . .", the Department recognizes that the amendments made to these sections will not become effective until the regulations are approved by the Office of Administrative Law.

Section 926-3.

This regulatory action will amend section 926-3, relating to the taxable value of board and lodging. In 2009 and thereafter until modified, the taxable value of three meals per day is raised from \$9.60 to \$10.00. The taxable value of breakfast is raised from \$2.10 to \$2.20. The taxable value of lunch is raised from \$2.90 to \$3.00. The taxable value of dinner is raised from \$4.60 to \$4.80. The taxable value of lodging is raised from \$1,092.00 to \$1,145.00 monthly maximum, and from \$35.40 to \$37.20 weekly minimum.

Section 926-4.

This regulatory action will amend section 926-4, relating to the taxable value of meals and quarters furnished to officers and crewmen aboard vessels. In 2009 and thereafter until modified, the taxable value of daily meals is increased from \$9.60 to \$10.00. The taxable value of quarters is increased from \$5.00 to \$5.30 daily for unlicensed personnel. The taxable value of quarters is increased from \$7.40 to \$7.70 daily for licensed personnel.

Section 926-5.

This regulatory action will amend section 926-5, relating to the taxable value of meals and quarters received by fishermen aboard fishing vessels. In 2009 and thereafter until modified, the taxable value of quarters is increased from \$35.40 to \$37.20 a week, or from \$5.00 to \$5.30 a day for periods of less than a week under specified conditions.

Authority and Reference:

Authority: Sections 305, 306 and 310, Unemployment Insurance Code.

Reference: Section 926, Unemployment Insurance Code.

Fiscal Impact:

Anticipated costs or savings in federal funding to the State: None

Anticipated costs or savings to any State Agency: None

Anticipated costs or savings to any local agency or school district: None

Significant statewide adverse economic impact: Approximately 600,478 businesses and small businesses will be affected statewide by these regulations. The types of businesses affected include fisheries, apartment complexes, residential care facilities,

restaurants and eating establishments, and private households. The total statewide cost to businesses and small businesses is anticipated to be \$4.8 million, however, the cost to individual businesses is minimal. The regulation does not impose any new reporting requirements on businesses.

The Department has made an initial determination that the proposed amendments will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states. The Department has determined that the proposed amendments will not affect the creation or elimination of jobs within the State of California; the creation of new businesses or the elimination of existing businesses within the State of California; or the expansion of businesses currently doing business within the State of California.

The costs impact on representative persons or businesses: These proposed amendments will affect only those businesses who furnish meals or lodging to their employees. The Department anticipates that the fiscal impact to the businesses will be negligible.

Anticipated impact on housing costs: These proposed amendments will have no effect on housing costs.

Anticipated nondiscretionary costs or savings imposed upon local agencies:
None

Small Business Impact:

These proposed amendments will not have a significant impact on small businesses since the changes reflect small inflationary increases in the taxable value of meals and lodging for purposes of wages within the meaning of section 926 of the UIC. Essentially, the proposed amendments will only accelerate the point at which an employee reaches the maximum taxable wage limit for the calendar year.

Local Mandate Determination:

The Department has determined that these proposed amendments will not impose any new mandates on school districts or other local governmental agencies or any mandates which must be reimbursed by the State pursuant to Part 7 (commencing with section 17500), of Division 4 of the Government Code.

Consideration of Alternatives:

In accordance with section 11346.5(a)(13) of the Government Code, the Department must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory amendments.

Written Comment Period:

Any interested person, or his or her authorized representative, may submit written comments on the proposed action to Laura Colozzi via U.S. mail, e-mail, or fax (see U.S. mail and e-mail addresses and fax number indicated below). **E-mail comments should include true name and mailing address of the commentor. Written comments submitted via U.S. mail, e-mail, or fax, must be received by the Department no later than April 20, 2009, at 5 p.m.** Please submit any written comments before that time. The Department cannot accept written comments after the close of the public comment period.

Contact Persons

Inquiries or comments should be directed to:

(Mailing address)	Laura Colozzi, Legal Analyst Employment Development Department P. O. Box 826880 Legal Office, MIC 53 Sacramento, CA 94280-0001
(Hand delivery)	Laura Colozzi, Legal Analyst Employment Development Department 800 Capitol Mall, Room 5020 Legal Office, MIC 53 Sacramento, CA 95814
Telephone No.:	(916) 654-7712
Fax No.:	(916) 654-9069
E-Mail Address:	eddlegal@edd.ca.gov

Note: In the event Laura is unavailable, inquiries should be directed to the following backup contact persons at the same address as noted above:

Name:	Penny Ayers, Legal Analyst
Telephone No.:	(916) 654-8410

Questions regarding the substance of the proposed regulatory action should be directed to:

Name:	Estela Gallawa, Staff Counsel
Telephone No.:	(916) 654-8410

Internet Website Access

The Department has posted on its internet website <http://www.edd.ca.gov> materials regarding the proposed regulatory action. Select "Proposed Regulations."

Public Hearing:

No public hearing has been scheduled on the proposed action. However, if any person desires to submit oral comments, the Department will schedule a public hearing upon that person's written request. **Such request must be received no later than 15 days prior to the close of the written comment period which is 5 p.m. on April 20, 2009.** A request for hearing can be made by contacting the persons noted above.

Modification of Proposed Action:

If the Department makes any additional changes based on public testimony, those changes (other than nonsubstantial or solely grammatical modifications) will be made available for public comment for at least 15 days before they are adopted. Copies of any additional changes regarding the proposed regulatory action will be mailed to all persons who testified or submitted written comments at the public hearing (if one is scheduled); whose comments were received by the agency during the public comment period; and who requested notification from the agency of the availability of such changes.

Final Statement of Reasons:

After the close of the 45-day public comment period, the Department will summarize and respond to all public comments in a written final statement of reasons. To obtain a copy of the final statement of reasons, contact the persons noted above, or access the Department's Internet website at <http://www.edd.ca.gov>.

Further Information:

The Department has prepared and has available for review, upon request, the text of the proposed regulations discussed in this notice, written in plain English; a statement of reasons setting forth the purpose of the proposed regulations; and the information upon which the Department relied in proposing the regulations. (If you received this notice by mail, a copy of the text of the proposed regulations and the statement of reasons were enclosed.) To obtain a copy, contact the persons noted above, or access the Department's Internet website at <http://www.edd.ca.gov>.

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review. For inquiries regarding the rulemaking file or the regulations' process, contact the persons noted above.
